

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

In re:	Chapter 7 (Previous Chapter 11)
UNIVERSAL MARKETING, INC., <i>et al.</i> , ¹	
Debtors.	Case No. 09-15404 (ELF) (Substantively Consolidated)

**MOTION OF CHAPTER 7 TRUSTEE FOR AUTHORIZATION TO SELL OR ASSIGN
DISCHARGE NOTE OUTSIDE OF THE ORDINARY COURSE OF BUSINESS
PURSUANT TO SECTION 363(B) OF THE BANKRUPTCY CODE**

Charles R. Goldstein, chapter 7 trustee (“Trustee”) for the substantively consolidated estate of the above-captioned Debtors (the “Consolidated Estate”), by and through his undersigned attorneys, hereby moves for the entry of an order authorizing the sale or assignment of the Discharge Note (as hereinafter defined) to Protiviti Inc. (“Protiviti”). In support of this Motion, the Trustee states as follows:

PRELIMINARY STATEMENT

1. The sale or assignment of the unsecured Discharge Note proposed herein will allow the Trustee to immediately dispose of the Discharge Note, which is the last known asset of

¹ The Debtors in this substantively consolidated proceeding are the following entities: Universal Marketing, Inc.; Universal Delaware, Inc.; Universal Enterprises, Inc.; Universal Management, Inc.; Universal Distribution Inc.; Project Growth Technologies, Inc.; Universal Real Estate, Inc.; 177 Old Camden Road, LLC; 1272 South Governors Ave, LLC; 133 Saulsbury Road, LLC; 1104 South State Street, LLC; 100 S. Main Street, LLC; 505 Bridgeville Highway, LLC; 323 West Stein Highway, LLC; 111 South West Street, LLC; 102 West Central Avenue, LLC; 302 Maple Avenue, LLC; 176 Flatlands Road, LLC; 5318 Snow Hill Road, LLC; 617 North Salisbury Boulevard, LLC; 28768 Ocean Gateway Highway, LLC; 241 Cypress Street, LLC; 610 Snow Hill Road, LLC; 106 Cedar Street, LLC; 326 East Dover Street, LLC; 101 Maple Avenue, LLC; and 2194 Reading Road, LP.

the Consolidated Estate, and permit the Trustee to make final distributions and close the Debtors' substantively consolidated bankruptcy cases.

2. Moreover, the sale or assignment of the Discharge Note will shift the risk of collection of the Discharge Note over the next five (5) years entirely to Protiviti. In exchange for the assignment or sale, the Consolidated Estate will receive from Protiviti credit against the amounts owed to it as though the payors under the Discharge Note made all payments that would be due and owing over the next five (5) years without any discount for the risk of collection or any discount to present value. The net effect of the credit is to decrease the amount of cash that will be distributed to Protiviti from the Consolidated Estate as part of its pro rata share of the final distribution and to permit Ballard Spahr LLP to receive a pro rata distribution of cash on its allowed administrative claim as though the full amount due and owing on the Discharge Note was paid.

3. As a result, and notwithstanding the relationship between Protiviti and the Trustee described herein, the Trustee believes that the sale or assignment should be approved, is in the best interest of the Consolidated Estate, and results in substantially more consideration to the Consolidated Estate than would be obtained if the Trustee sold the Discharge Note to a third party with no connections to the Trustee or the Consolidated Estate.

JURISDICTION AND VENUE

4. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (N), and (O).

5. Venue of this proceeding and this Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

6. The statutory predicate for the relief sought herein is Rule 9019 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

BACKGROUND

7. On July 23, 2009 (the “Petition Date”), Universal Marketing, Inc. (“UMI”) filed a voluntary petition for relief pursuant to Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Eastern District of Pennsylvania (the “Court”), Case No. 09-15404-ELF (the “Bankruptcy Case”). UMI remained in possession of its assets and continued in the management of its business as a debtor-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code, until the Bankruptcy Case was converted.

8. Specifically, by Order dated August 18, 2009 (the “Conversion Date”), the Bankruptcy Case was converted to a case under Chapter 7 of the Bankruptcy Code, and Terry P. Dershaw was appointed interim chapter 7 trustee.

9. On September 23, 2009, creditors voted to elect Charles R. Goldstein as the permanent trustee in this chapter 7 proceeding pursuant to 11 U.S.C. § 702. The Trustee is a managing director of Protiviti and leads Protiviti’s restructuring and litigation services practice. On October 7, 2009, the Court entered Orders approving the retention of (i) Protiviti as financial advisors to the Trustee and (ii) Archer & Greiner, P.C. as attorneys to the Trustee.

10. On April 19, 2010, the Trustee filed a Motion to Approve Settlement Agreement and for Substantive Consolidation With and Extension of Proceedings to Non-Debtor Entities [Docket Nos. 316-319] (the “Settlement and Consolidation Motion”) seeking (i) approval of a negotiated settlement arrangement reached among the Trustee, UMI’s affiliates, and certain other entities and persons, including, but not limited to, Daminder S. Batra, a/k/a Daminder Singh, a/k/a Dan Singh (“D. Batra”) and Gurmeet Batra, a/k/a Ann Batra (“A. Batra” and together with

D. Batra, the “Batras”) and Jashveer Singh, a/k/a Jassi Singh (“Singh”), pursuant to Fed. R. Bankr. P. 9019 (as modified, amended, and supplemented thereafter, the “Affiliate Settlement Agreement”); and (ii) the substantive consolidation of, and extension of bankruptcy proceedings over, certain non-debtor entities.

11. On June 16, 2010, the Trustee filed a Motion to Approve Compromise Under Fed. R. Bankr. P. 9019 with TD Bank, N.A. [Docket No. 365] (the “TD Settlement Motion”), seeking approval of the terms of a settlement agreement entered into by and between the Trustee and TD Bank, N.A. (“TD”), pursuant to Fed. R. Bankr. P. 9019 (the “TD Settlement Agreement”), and granting such other relief as the Court deems just and appropriate under the circumstances.

12. On August 4, 2010, the Court entered an Order Granting Substantive Consolidation and Approving Affiliate Settlement Agreement and TD Settlement Agreement (the “First Substantive Consolidation Order”). Pursuant to the First Substantive Consolidation Order, all assets and liabilities of UMI and certain other non-debtor entities were consolidated into the Consolidated Estate.

13. At that time, the Affiliate Settlement Agreement provided, *inter alia*, that the Trustee had one year from the entry of a final, non-appealable order by the Court approving the Affiliated Settlement Agreement to decide whether to release the Batras and/or Singh (the “Release Determination Period”). The Release Determination Period was extended several times and the Affiliate Settlement Agreement was amended twice.

14. Most recently, by Order entered on January 25, 2012, the Court approved a Second Modification to Settlement Agreement [Dkt No. 1091] (the “Second Modification”) which approved, among other things, of an unsecured promissory note payable to the Consolidated Estate, or such other payee as the Trustee may designate, in the principal amount of

\$250,000 payable in sixty equal monthly installments with the first payments commencing one month after the expiration of a three year period (the “Discharge Note”). The amount evidenced by the Discharge Note was deemed excepted from any discharge received by D. Batra in his individual chapter bankruptcy case. Further, the amount of the Discharge Note could be reduced, on a sliding-scale basis, based upon the actual dollar amount of recoveries collected by the Consolidated Estate in certain litigation cases.

15. The Second Modification required the Trustee to issue credits based on the actual dollar amount of recoveries collected in the referenced litigation cases (the “Litigation Recoveries”).

16. The amount of the Litigation Recoveries was determined in 2016 and is \$5,291,969.98. As a result, pursuant to the Second Modification, in late 2016, the Trustee determined that the Batras and Singh owe the Consolidated Estate \$200,000.00 under the Discharge Note. The Trustee made demand upon the Batras and Singh to commence payments under the Discharge Note, and the Trustee has received three monthly payments since making demand. The first payment under the Discharge Note of \$3,333.33 was made in January 2017. After crediting the five payments made by the Batras and Singh since January 2017, as of the date of this Motion, the outstanding principal balance of the Discharge Note is \$183,333.35.

17. Prior to making demand upon the Batras and Singh, the Trustee contacted persons in the business of purchasing debt instruments to determine what a third party would be willing to pay to purchase the Discharge Note. The Trustee received only *de minimis* offers for the Discharge Note. The primary issue the Trustee encountered in attempting to sell the Discharge Note to a third party is that the obligations are not secured by any collateral.

RELIEF REQUESTED AND BASIS THEREFORE

18. Through this Motion, the Trustee seeks to sell and assign the Discharge Note to Protiviti in exchange for a credit reducing the amount owed to Protiviti by the Consolidated Estate by \$183,333.35. The net effect of the credit is to decrease the amount of cash that will be distributed to Protiviti from the Consolidated Estate as part of its pro rata share of the final distribution and to permit Ballard Spahr LLP to receive a pro rata distribution of cash on its allowed administrative claim in connection with the final distribution as though the full amount due and owing on the Discharge Note had been paid. No other creditors are affected by the relief sought in this Motion.²

19. Section 363(b)(1) of the Bankruptcy Code provides that “[t]he trustee, after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Under section 363(b), a court may authorize a trustee to sell property of the estate when such has a “sound business purpose” and when the use of the property is proposed in good faith. *See In re Decora Indus., Inc.*, No. 00-4459, 2002 WL 32332749 at *2 (D. Del. May 20, 2002); *In re De. & Hudson Ry.*, 124 B.R. 169, 175-76 (D. Del. 1991); *In re Schipper*, 933 F.2d 513, 515 (7th Cir. 1991); *Stephens Indus., Inc. v. McClung*, 789 F.2d 386, 390 (6th Cir. 1986); *Committee of Equity Security Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1071 (2d Cir. 1983).

20. When evaluating whether a sound business purpose justifies the use, sale, or lease of property under section 363(b), courts generally employ a “business judgment test.” *See In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (Bankr. D. Del. 1999). Courts consistently

² The Trustee projects that Protiviti and Ballard Spahr will receive a distribution equal to approximately [55.75]% of their respective allowed administrative claims. Archer & Greiner LLP agreed to a cap on distributions on account of its administrative claim, which cap was previously reached. As a result, by agreement, Archer & Greiner will not receive any further distributions from the Consolidated Estate, and this Motion only affects the final distributions to be made to Protiviti and Ballard Spahr.

and appropriately have been unwilling to interfere with business decisions absent a showing of bad faith, self-interest, or gross negligence, and will uphold a business decision so long as they are attributable to a rationale business purpose. *Official Comm. Of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.)*, 147 B.R. 650, 656 (S.D.N.Y. 1992). Whether or not there are sufficient business reasons to justify the use of assets of the estates depends upon the facts and circumstances of each case. *Lionel*, 722 F.2d 15 1071; *Embrace Systems*, 178 B.R. at 125.

21. Moreover, the paramount goal in any proposed sale of property of the estate is to maximize the proceeds received by the estate. *See, e.g., In re Food Barn Stores, Inc.*, 107 F.3d 558, 564-65 (8th Cir. 1997) (in bankruptcy sales, “a primary objection of the Code [is] to enhance the value of the estate at hand”); *In re Integrated Res., Inc.*, 147 B.R. 650, 656 (S.D.N.Y. 1992) (“It is a well-established principle of bankruptcy law that the ... [trustee’s] duty with respect to such sales is to obtain the highest price and greatest overall benefit possible for the estate.”) (quoting *In re Atlanta Packaging Prods., Inc.*, 99 B.R. 124, 130 (Bankr. N.D. Ga. 1988)).

22. The result of the consideration to be given by Protiviti in exchange for the Discharge Note is that professionals other than Protiviti will receive immediate payment in cash for the full amount they would receive if the Batras and Singh were to make all future payments due and owing under the Discharge Note over approximately the next five years. Further, under the proposed structure, Protiviti takes all the risk of collection or non-collection of future payments on the Discharge Note. The proposed assignment and sale will also allow the Trustee to almost immediately close the Consolidated Estate and the Bankruptcy Case.

23. Even though the proposal involves a sale or assignment by the Trustee to an entity for which he is a managing director and the same entity which served as financial advisors in the Bankruptcy Case, the consideration to be provided is substantially more than the market-test conducted by the Trustee indicated any third party would be willing to pay to acquire the Discharge Note.

24. As a result, the Trustee's proposal to sell or assign the Discharge Note constitutes a valid exercise of the Trustee's business judgment and maximizes the proceeds to be received by the Consolidated Estate. Accordingly, the proposed sale or assignment of the Discharge Note is in the best interest of the Consolidated Estate and should be approved by this Court.

NOTICE

25. In accordance with Fed. R. Bankr. P. 2002(a)(3), this Motion and a notice of this Motion has been served on (i) the Office of the U.S. Trustee, (ii) all creditors of the Consolidated Estate and (iii) all other parties requesting notice. The Trustee submits that such notice is sufficient.

WHEREFORE, the Trustee respectfully requests that this Court enter an order approving the sale or assignment of the Discharge Note on the terms set forth herein and in the proposed form of Order submitted herewith and grant such other and further relief as may be just and appropriate.

Date: June 7, 2017.

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CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of June 2017, I caused a true and correct copy of the foregoing Motion of Chapter 7 Trustee for Authorization to Sell or Assign Discharge Note Outside the Ordinary Course of Business Pursuant to Section 363(b) of the Bankruptcy Code to be served via first class mail to the individuals/entities listed below and those contained in the attached service list:

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Wayman Fire Protection, Inc
403 Mecco Drive
Wilmington, DE 19804

Goodman Tank Lines
463 Old Reading Pike
P.O. Box 56
Stowe, PA 19042

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Hercules Plaza, Suite 5100
1313 Market Street
Wilmington, DE 19899-1709

Kreiser Fuel Services, Inc.
122 Racehorse Drive
Jonestown, PA 17038

Rich Coast Corporation
41 Meadowbrook Lane
Lewistown, PA 17044

Murphy Transport, Inc.
P.O. Box 3
Greensboro, MD 21639

The News Journal
P.O. Box 15505
Wilmington, DE 19850

Office Furniture Outlet
2860 Route 73
Maple Shade, NJ 08052

Victory Beverage
P.O. Box 1011
Pleasantville, NJ 08232

Petro Express
Petroleum Product Corp.
1836 Chesapeake Avenue
Baltimore, MD 21226

Wenger Meats & Ice Co.
511 East Louther Street
Carlisle, PA 17013

Samuel Coraluzzo Co., Inc.
1713 North Main Road
Vineland, NJ 08360

York Ice Co Inc
281 Kings Mill Rd.
York, PA 17401
Thind Brothers LLC
622 Thompson Avenue
Bound Brook, NJ 08805

Aarmor Safe Technologies LLC
5916 Stone Creek Drive,
Suite 100
P.O. Box 560275
The Colony, TX 75056

Abhay Patel
106 Topaz Circle
Dover, DE 19904

Keystone Petroleum Equipment
Ltd
981 Tridle West Rd.
Mechanicsburg, PA 17055

Zytax, Inc.
5 Greenway Plaza
Suite 1310
Houston, TX 77046

Clark Food Service Equipment
P.O. Box 10
Smoketown, PA 17576

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Attention: Solicitor's Office
55 East Court Street
Doylestown, PA 18901

Royston LLC
1 Pickroy Road
Jasper, GA 31043

Tri County Complex
619 Point Township Drive
Northumberland, PA 17857

Oliver Heating And Cooling
101 Waverly Avenue
Morton, PA 19070

Farm & Home Oil Company
3115 State Road
Telford, PA 18969-1076

B&F Petroleum Installations Inc
2121 Adams Street
Reading, PA 19605

Swisher Hygiene Franchisee Trust
P.O. Box 473526
Charlotte, NC 28247

Canada Dry Dist
P.O. Box 403708
Atlanta, GA 30384

Southern State Corp.
P.O. Box 26234
Richmond, VA 23260

All American Electrical Service, LLC
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Denton, MD 21629

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North Wales Water Authority
P.O. Box 1339
North Wales, PA 19454

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7120 Pointe Inverness Way
Ft. Wayne, IN 46804

N&G Distributing
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Highland, CA 92346

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Navy Yard Corporate Center
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Philadelphia, PA 19112

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Dept. Of Revenue/Bureau Of Compliance
Strawberry Square, 7th Floor
Harrisburg, PA 17128

Verizon
P.O. Box 660720
Dallas, TX 75266

City Of Salisbury Water & Sewer Dept.
125 N Division St.
Salisbury, MD 21801

Comptroller Of Maryland
P.O. Box 1829
Annapolis, MD 21401

Armac Inc
4027 Atlantic Ave.
Raleigh, NC 27604

Novelty, Inc.
351 West Muskegon Drive
Greenfield, IN 46140-3071

Clayton Services Corporation
605 West 3rd Street
Lansdale, PA 19446

Home Depot Card Servs.
P.O. Box 6925
The Lakes, NV 88901

David W. Thompson Inc
P.O. Box 38
Magnolia, DE 19962

Sterling National Bank - Leasing
P.O. Box 1570
New York, NY 10008

K&D Factory Service Inc
1833-41 North Cameron St.
Harrisburg, PA 17103

Toyota Financial Servs.
P.O. Box 9490
Cedar Rapids, IA 52409

Roady's Truck Stop
Roady's Truck Stops
P.O. Box 173
New Plymouth, ID 83655

Var Resource, Inc. (Huntington
Bank)
P.O. Box 701096
Cincinnati, OH 45270

Noels Lawn Care
334 Fairview Street
Carlisle, PA 17015

Federated Insurance
P.O. Box 328
Owatonna, MN 55060

Comdata Network Inc
5301 Maryland Way
Brentwood, TN 37027

Citi Credit Card
100 Citibank Drive
San Antonio, TX 78245

Robinson Real Estate
P.O. Box 571
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Annapolis, MD 21404-2999

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Division of Taxation
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Media, PA 19063

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P.O. Box 4
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Shell Fixed - Baltimore
P.O. Box 9741
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Philadelphia, PA 19178

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Kansas City, MO 64116

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Conestoga, PA 17516

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1 Hess Plaza
Woodbridge, NJ 07095-0961

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Harrington, DE 19952

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2 International Drive
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